REMARKS/ARGUMENTS

Claims 1-8, 11-28, 31-41, and 44-49 are pending in the present application. With this amendment, claims 1, 21, and 41 have been amended. Reconsideration of the claims is respectfully requested.

Applicants have amended the independent claims to describe receiving a modification, which was made by the customer, to the terms of sale. A negotiating engine then automatically negotiates terms of sale by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale. The negotiating engine automatically negotiates with the customer terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service. One example of support for this amendment can be found in Applicants' specification on page 4 lines 5-21.

I.   35 U.S.C. § 103, Obviousness

The Examiner has rejected claims 1-8, 12-28, 32-41, and 44-49 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication 2002/0016759 published by *Macready* in view of U.S. Patent 6,401,080 issued to *Johnson*. This rejection, as it might be applied to the claims as amended, is respectfully traversed.

Applicants have amended the independent claims to describe receiving a modification to the terms of sale. The modification was made by the customer. The negotiating engine determines and provides a counteroffer to each modification of the terms made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale. The negotiating engine negotiates with the customer the terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service.

Per the Office Action, the Examiner states:

Re. Claim 1, Macready discloses a system, method and apparatus, storing one or more rules identifying strategic selling policies (preferences) in a storage device in the computer system and storing attributes for the product or service to be sold in a storage device in the computer system [Abstract; Figure 3; paragraphs (para.) 002 (seller capability), 0009 (decision), 0017 (attributes), 0056, 0125, 0142, 0211, 0157, 0278-0281, 0297, 0303], automatically determining an initial offer of sale for the product or service, automatically providing the initial offer of sale to a customer, and obtaining history information regarding the product or services, and determining acceptable terms of sale based on the history information [page 26 claim 109; para. 0003; 0048; 0211; 0278; 0360 (see bad past experience)].

Macready does not explicitly disclose automatically negotiating, by negotiating engine in the computer system, terms of sale the product or service based on initial offer of sale, the one or more rules, and the one or more attributes of the product or service. However Johnson discloses this feature [C1 L44-L58, C4 L66-L67; c6 L17-L22, L57-L64; C14 L10-L25 – see moderator = automatic negotiator] to obtain wholesale price with best economic value by automatic auction system. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Macready and include automatically negotiating, by negotiating engine in the computer system terms of sale the product or service based on initial office or sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service, as disclosed by Johnson, to provide an electronic auction system with negotiation engine to obtain best price for the product.

Office Action dated February 27, 2006, pages 2-3

The Examiner relies on the moderator of *Johnson* to teach a negotiating engine that automatically negotiates terms of sale. The Examiner states that *Johnson* teaches obtaining the wholesale price with the best economic value by an automatic auction system. Applicants disagree with the Examiner that *Johnson* teaches the moderator negotiating terms of sale.

The moderator of *Johnson* administers a bidding service. It does not participate in an auction. It does not negotiate anything. It merely facilitates. The moderator receives bids from the providers. The moderator then notifies various providers about what the other providers have bid. The providers then have an opportunity to adjust their bids. Thus, "through this auction, Providers will be apprised of the bids of competing Providers and have an opportunity to modify their bids accordingly." Column 6, lines 16-19. The providers do not negotiate with anyone when modifying their bids. They merely see other providers' bids and then determine what to bid in order to make their bid more competitive in comparison.

The providers transmit their bids to the moderator. The moderator then transmits the bids to the providers so that providers are aware of what their competitors have bid. After being apprised of what their competitors have bid, the providers can then lower or raise their own bid.

The moderator also transmits the bids to the end users. These end users are the customers. After being apprised of what the providers have bid, each end user customer then selects the provider that will provide electrical power or natural gas to the end user. There is no negotiation that takes place. The end user merely selects one of the bids it has been offered. The end user does not negotiate with anyone.

Applicants claim the customer modifying the terms of sale. The negotiating engine then automatically negotiates determines and provides a counteroffer to each modification made by the customer. The end user of *Johnson* merely selects a bid. The end user does not have the opportunity to modify the terms of sale.

Each end user has a control computer that physically connects to the moderator. The control computer is the physical device that is used by an end user to receive bids. Once the end user selects a bid, the control computer is used by the end user to transmit that bid back to the moderator. If an end user does not have a control computer, the moderator can act as the control computer for that end user.

A default provider may also be selected. See Column 14, lines 10-24. "If, for example, prices bid in the auction rise above a fixed upset price previously agreed to by the default Provider, the relevant control computer (the Moderator) will select the default Provider as the winning bidder. The Moderator may negotiate with one or more Providers to serve as default Providers for EAS." Column 14, lines 12-17. Thus, the moderator assists in the selection of the default provider(s) by negotiating with the providers to determine which provider will serve in this role. By helping select which provider will server as the default provider, the moderator does not negotiate terms of sale with the end user. The moderator merely helps select a provider. Selecting a provider is not the same as negotiating terms of sale.

Johnson does not teach the features of the amended claims. Applicants claim the negotiating engine automatically negotiating by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale. Thus, Applicants claim a negotiation taking place between the negotiating engine and the customer.

Johnson teaches a moderator that receives bids from a provider, sending these bids to an end user, waiting for an end user to select one of the bids, and then receiving a selection of the bid from the end user. The moderator does not negotiate with the customer. The moderator merely transmits bids and receives a selection of a bid. There is no negotiation between the moderator and the end user.

Further, there is no negotiation between a provider and an end user. The provider merely offers a bid. The end user customer then selects from among the bids it was provided. The end user cannot modify the terms of sale set by a provider in its bid. No negotiation takes place.

Applicants also claim automatically negotiating, by the negotiating engine, with the customer terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service. Thus, the negotiation involves negotiating these aspects of the transaction. There is an actual negotiation between the negotiating engine and the customer. The negotiation claimed by Applicants includes negotiating the terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service.

The Examiner relies on column 1, lines 44-58, column 4, lines 66-67, column 6, lines 17-22, and lines 57-64, and column 14, lines 10-25.

Column 1, lines 44-58, teaches power generators being expected to offer prospective customers various pricing plans.

Column 4, line 66, through column 5, line 1, teaches: "The price at which this offered power is accepted by the exchange operator will be the purchase price payable to the power provider." This section does not teach a negotiation between the moderator and the end user or between a provider and an end user.

Column 6, lines 17-22, teaches providers being apprised of the bids of competing providers. After being apprised of the bids of the competing providers, the providers have an opportunity to change their bids. There is no negotiating that takes place between the moderator and the end user. There is no negotiating that takes place between the provider and the end user. The provider merely provides a bid and then can change the bid to make it more competitive with other providers' bids.

Column 6, lines 57-64, teaches an end user having a control computer. If the end user does not have a control computer, the moderator can act as the control computer for that end user. In that case, the moderator will receive bids from providers for that end user and wait for the end user to select one of these bids. When the end user does not have a control computer, the moderator can serve that role for the end user. When the moderator serves this role and stands in as the control computer for the end user, the moderator merely receives bids from the providers and waits for the end user to select one of the bids. There is no negotiation between the moderator and the end user. The moderator merely provides bids to the end user and waits for the end user to select one of the bids.

Column 14, lines 10-25, teaches a default provider that has agreed to a fixed upset price. The moderator can negotiate with the providers to select one of the providers to act as the default computer. Thus, the moderator helps select which provider will serve as the default provider.

None of these sections of *Johnson* that are referenced by the Examiner teaches the features of Applicants' claims. None of these sections teaches the negotiating engine automatically negotiating terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale.

Johnson does not teach a negotiating engine that automatically negotiates terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the

customer and the negotiating engine agree to mutually acceptable terms of sale. Therefore, the combination of *Macready* and *Johnson* does not render Applicants' claims obvious.

The Examiner rejected claims 11 and 31 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication 2002/0016759 published by *Macready* in view of U.S. Patent 6,401,080 issued to *Johnson* and further in view of U.S. Patent 6,647,374 issued to *Kansal*. This rejection, as it might be applied to the claims as amended, is respectfully traversed.

Claims 11 and 31 describe the history information including at least one of production costs for the product or service, prices of similar or competing products or services, current or past sales and income on different products or services, estimates of historical measures of customer demand for the product or service, and customer click stream history.

Neither *Macready*, *Johnson*, or *Kansal* teaches the negotiating engine automatically negotiating terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale. The combination of *Macready*, *Johnson*, and *Kansal* does not teach the negotiating engine automatically negotiating terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale in combination with the history information including at least one of production costs for the product or service, prices of similar or competing products or services, current or past sales and income on different products or services, estimates of historical measures of customer demand for the product or service, and customer click stream history. Therefore, the combination of *Macready*, *Johnson*, and *Kansal* does not render claims 11 and 31 obvious.
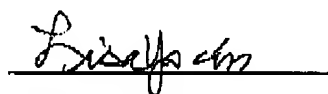
II.   Conclusion

It is respectfully urged that the subject application is patentable over the cited prior art and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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